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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

David C., et. al.,

Plaintiffs

v.

THE GOVERNOR OF UTAH, THE
DIRECTOR OF UTAH'S DEPARTMENT OF
HUMAN SERVICES AND THE DIRECTOR
OF UTAH'S DIVISION OF CHILD AND
FAMILY SERVICES,

Defendants

**DEFENDANTS' NOVEMBER
2006 STATUS REPORT**

CIVIL NO: 2:93-CV-00206 TC

JUDGE CAMPBELL

The Defendants, through counsel, Craig L. Barlow and Susan Eisenman, hereby submit the Defendants' November, 2006 status report to the Court.

I. INTRODUCTION

Since the status conference in May, 2006, the Plaintiffs, the Division of Child and Family Services (the Division) and the Monitor have collaborated frequently and cooperatively. Lengthy discussions resulted in the stipulated motion to amend the health care Case Process Review (CPR) questions (Docket no. 568). The "Vexing Problem Study" was completed, with positive results. Utah continues to improve its performance on the CPR and the Qualitative Case Review

(QCR). The parties are also working together on a quality improvement summit scheduled in December, 2006, and have agreed to discuss a stipulated exit plan.

II. SPECIFIC COMPLIANCE WITH THE MILESTONE PLAN

A. Milestone 7: “Vexing Problem Study”

In July, 2006, the Division published its study of families with repeat Child Protective Services (CPS) referrals. This study was initially proposed by the Monitor. The study presented a nationally recognized concern that deserved focus in this and every child welfare system.

Repeat CPS referrals are not a systemic problem in Utah. The study found that seventy-seven percent of the 1,922 children entering foster care had between zero and two investigations prior to removal. Refining that data to CPS investigations between 2003-2004 (a period where all caseworkers received practice model training), ninety-five percent of children entering foster care had between zero and two prior supported CPS investigations. In cases with higher number of referrals, families typically received continuous services that increased in intensity over time. This information suggests that Utah’s children are being protected in a timely manner and do not experience excessive repeat CPS interventions.

The Child Welfare Policy and Practice Group (CWPPG) published its own review of the Division’s study on September 14, 2006. CWPPG reviewed the Division’s methodology and results in conjunction with many other sources of information and determined that the Division’s findings were sound.¹ CWPPG’s report also confirms that Utah’s performance is better than the national average for subsequent substantiated findings within six months of a prior

¹ Review of the DCFS “Vexing Problem Special Study-Analysis of Prior Child and Family Services (DCFS) Involvement with Children Entering Foster Care,” CWPPG publication, September 14, 2006, p. 5 (CWPPG report).

substantiation.² The Plaintiff and the Monitor requested that the Division break out the information by region, and the Division has done so. The Monitor concluded that no other follow-up was warranted.³

B. Milestone 7: Case Process Review

1. New information or data obtained since May, 2006.

The significant progress reported in the Defendants' May, 2006 Status Report (Docket no. 559) continues. The stipulated changes to the health care questions (Docket no. 568) should result in more accurate information regarding the Division's ability to meet children's health care needs in both a meaningful and timely way. The changes were heralded as a vast improvement by the Utah Department of Health's "Fostering Healthy Children" nurses and by the Department of Human Services' Office of Services Review (OSR).

2. Compliance with the Milestone Plan.

Scores on the CPR remain high. In fiscal year (FY) 2006, required activities were documented eighty-nine percent of the time.⁴ The overall results for Child Protective Services surpassed the ninety percent requirement, and the overall results for home based and out-of-home services both surpassed the eighty-five percent requirement.

The Division has achieved acceptable scores on the vast majority of questions where there is a statistically significant sample. In some CPR questions, however, it is impossible to get a sample large enough to accurately measure system performance. For example, question

² CWPPG report, p. 5. According to the CWPPG report, the last available national average for performance in this area is 8.4 percent of cases. Utah has repeat substantiations in 6.5. percent of cases.

³ CWPPG report, p. 6.

⁴ The information about FY 2006 CPR and QCR results is taken from the Department of Human Services, Office of Services Review, Fiscal Year 2006 report, available on-line at www.hsosr.utah.gov The eighty-nine percent represents cases where there was a "yes" answer or where the case received "partial credit."

CPS C1 asks whether a child received a medical examination within twenty-four hours if the case involved certain types of severe abuse or neglect. For the last review period, there were only seven cases in the state where this question would be relevant. In six of these cases, a timely medical exam was documented. In the seventh case, a medical exam was not obtained in twenty-four hours; that one case caused the CPR score to dip below the required ninety percent.⁵

When the statistically significant questions are isolated, Utah met or was within ten percent of the goal for all but three questions. Of these statistically significant questions, all but one either remained above the required score or improved. The Division has demonstrated that its CPR performance is sustainable.

C. Milestone 8: Qualitative Case Record Reviews

1. New information or data received since May, 2006.

The Western region passed its QCR in October, 2006, joining the Salt Lake region and the Southwest region.⁶ For the sixth year in a row, all regions have sustained the required exit scores on child and family status. Child and family status indicators examine safety, permanency, and a child's well-being.

2. Compliance with the Milestone Plan.

The Division is required to meet QCR performance goals for two consecutive reviews. (Milestone Plan, p. 75). Statewide, the child and family status scores have met performance goals for six consecutive years. System performance scores have been extremely close to the required eighty-five percent: 84 percent in FY 2004; 86 percent in FY 2005; and 82 percent in FY 2006. Southwest region has achieved the exit criteria on both measures for three years in a row.

⁵ In the seventh case, the child was released to his father, and paramedics had opined that the child had not been contaminated (by exposure to methamphetamine).

⁶ The QCR data is taken from the Office of Services Review fiscal year 2006 report, with the exception of the results from the Western Region QCR results, which are still in draft form.

The Division has made numerous efforts to improve its scores on “long term view” and “child and family assessment,” and has refined its training on these topics several times. The efforts were effective, as scores on child and family assessment improved statewide from thirty-two percent in FY 2002 to sixty-two percent in FY 2006. Western region’s scores on long term view improved from fifty-four percent in FY 2006 to seventy-one percent in FY 2007; child and family assessment improved from fifty-four percent in FY 2006 to seventy-five percent in FY 2007. Division administration, caseworkers, and CWPPG staff have discussed assessment and long-term view at virtually every QCR exit conference. After investigation and inquiry around the nation, the Division has concluded that there is no functional model that the Division can replicate to improve its scores on these two measures. The Monitor has worked with Hawaii and Alabama on similar concepts, but the Division is not aware of any data to indicate that those states are performing at the levels expected in Utah. The Division remains committed to improving system performance in these areas and to maintaining the excellent outcomes reflected in the child and family status scores.

D. Milestone 9: Quality Improvement Committees

1. New information or data received since May, 2006.

QI Committees remain operational throughout the state. Members review trend data and discuss system improvement in their communities. This quarter, the Eastern region’s QI committee reviewed data regarding adolescents and employment. As a result, the committee organized meetings with parent groups and resolved to ask the Department of Workforce Services to recruit more adolescent foster children for employment opportunities. The Southwest region’s QI committee reviewed substance abuse data, which prompted a sub-committee to review drug court models. Southwest also reviewed kinship placement data, and is investigating whether the Salt Lake Region’s “grand families” program would be workable in Southwest.

The QI committees have also initiated positive interactions with the media and the public. The Eastern and Southwest committees publicized positive stories about the Division to local newspapers. The Northern committee generated “Stories of Hope” to recognize successful casework in their area, and both television and print media picked up the stories.

A “quality improvement summit” is planned for December 5, 2006. CWPPG and the Plaintiff will participate, and the summit will focus on sharing ideas, creating a unified vision of the committees’ role, and establishing a protocol for the exchange of recommendations and responses between communities, the committees, and the Division.

2. Compliance with the Milestone Plan.

The Milestone Plan requires QI committees to function at various organizational levels, and requires the Division to address the problems identified by the committees’ recommendations. (Milestone Plan, p. 79). The committees function on the state and local level. The committees have made recommendations to the Division, and those recommendations have been adopted or addressed. The Plaintiff and the Monitor have both confirmed in writing that they share the Division’s philosophy that the committees are advisory only, and that compliance with this goal does not require the committees to assume the role of the Monitor or the Plaintiff. The Division is well on its way.

III. HAVE THE SYSTEMIC REFORMS TRANSLATED TO BETTER OUTCOMES FOR UTAH’S CHILDREN AND FAMILIES?

A. Utah’s system reform has resulted in better outcomes for children and families.

At the May, 2006 status conference, the Court asked both parties whether the systemic reforms memorialized in the Milestone Plan actually translate to better outcomes for Utah’s children and families. (Transcript of Status Conference, May 16, 2006, pp. 4, 5-6, 12). The answer is an emphatic yes. The vexing problem study is one illustration of how the statewide implementation of the practice model (Milestone 1) improved outcomes for Utah’s children. The

study shows that the children have been referred for fewer CPS interventions since employees were trained in the Practice Model. CWPPG's report on the study provides independent confirmation that Utah's progress on the Milestone Plan goals has resulted in better outcomes for Utah's children and families.⁷

The QCR provides additional proof that Utah's reform is real. The child and family status scores on the QCR have been above ninety percent for five years. Child safety is the "gold standard" indicator of child and family status. The child safety indicator asks whether a child is safe from manageable risks of harm, whether others are safe from the child, and whether the child is free from intimidations and fears at home or at school. If a case does not pass child safety, it fails the whole child and family status indicator. Of the 168 cases scores in FY 2006, 160 had an acceptable safety score (4, 5, or 6 on the QCR measurement). A failing score does not necessarily mean that a child is not safe; a case fails automatically if the child is "AWOL" from the system, and may fail if the child is a danger to another person. For the past five years, the statewide QCR scores for safety have exceeded ninety percent. These results show that Utah's child welfare system protects children.

An enormous amount of reliable data is available to measure the system's effect on children and families. The data system, SAFE, is reviewed and validated by both the Monitor and the federal Administration for Children and Families (ACF), and provides many examples of real reform. Between the first quarter of 2005 and the fourth quarter of 2006, the number of children experiencing repeat abuse or neglect within 12 months of closure of a case dropped from six percent to four percent. This drop represented a benefit to approximately 80 children, and is steady for the first quarter of fiscal year 2007.⁸ Another example is data on re-entry into foster

⁷ CWPPG Report, p. 5.

⁸ This information is compiled from the trend data compiled by the Division and that is part of the quarterly reporting to the Monitor.

care. Prior to 2006, children re-entering foster care within a year of being released from the Division's custody had remained steady at about twelve percent. The Division focused on improving this result, increased and improved services to families, and brought the rate of re-entry down to 9.75 percent in the last quarter of FY 2006.⁹ These results demonstrate the system's independent ability to improve and self-correct, and the positive affect that these changes have on children.

Comparisons to national data provide other barometers of Utah's progress. Since 2003, the median length of stay in out-of-home care has been less than eleven months (10.3 months in FY 2003, 11.0 months in FY 2004, and 10.0 months in FY 2005).¹⁰ Comparing these data to other states, Utah children spend the second shortest amount of time in out-of-home care, behind only Iowa. For the past four years, more than eighty percent of children in out-of-home care have been reunified with their families within twelve months. These statistics show that Utah's children are not languishing in foster care. These are only a few of the many ways that the collection and review of data (Milestone 6) demonstrate real and sustainable results.

B. Utah's shortcomings on the Milestone Plan measurements have not substantially harmed Utah's children and families.

Utah's reforms have translated into better outcomes for Utah's children and families. Low performance scores on certain measures, however, have not translated into harm. Using the CPR example cited above, six out of seven children who experienced severe trauma were medically examined within twenty-four hours. While the question did not receive the ninety percent score required to pass, all but one child reviewed received the required medical attention within the required time frame.

⁹ Re-entry into foster care is distinct from repeat maltreatment, because a child can re-enter foster care without being mistreated; for example, if a parent relapses on drugs, goes to jail, or if a kinship placement fails and the child is placed back into DCFS custody.

¹⁰ This information is taken from the Child Welfare League of America's review of Federal AFCARS data.

Health care CPR questions provide another illustration. While the CPR scores for health care have been perennially low, the health outcomes measured by the QCR have consistently scored above ninety-seven percent. The QCR instrument evaluates whether the child is in good health, has access to services, and whether the child's health problems are being adequately addressed. The CPR, an objective measurement tool, only evaluates whether an appointment was scheduled or attended within a certain time period. If the appointment is one day late, the CPR case fails even if the child received the necessary care. These examples illustrate the need for both instruments; the CPR to evaluate objective measurements of system performance, and the QCR to assess the actual outcomes for children and families in greater depth. Together, results that fail one instrument – measurement – are mitigated by actions captured in the other instrument – outcomes.

In a letter to the Division on September 29, 2006, the Monitor writes: "I believe that the approaches and tools of the Practice Model and Performance Milestone Plan, such as child and family team meetings, comprehensive retraining, an effective data system, individualized planning, flexible services, and the QCR have helped Utah gain national notice and more importantly, improve outcomes for children and families." The above examples confirm that this is so. Systemic reforms have benefitted Utah's children and families.

IV. UTAH'S SYSTEM IS SUSTAINABLE.

For the past six years, Utah has demonstrated its ability to maintain an excellent child welfare system. Utah's final hurdle is to gain approval from the Court to continue this progress without continued advocacy from the Plaintiff, oversight from the Monitor and Federal Court enforcement. There are at least four indicators that demonstrate that Utah is ready to exit Federal Court oversight.

A. The infrastructure is in place.

The first six milestones within the Performance Milestone Plan secured Utah's system infrastructure. In its May 4, 2006 letter to the Division, the Monitor confirmed that this infrastructure is fully operational. (Docket no. 559, exhibit 1). The Division has demonstrated its ability to adapt and enhance the system when necessary. In regards to Utah's enhancements of the Practice Model, for example, the Monitor found that the content "retains fidelity to the original design and in fact strengthens the original curriculum." (Docket no. 559 exhibit 1). Milestones 2, 3, 4, 5, and 6 are complete. The CPR and QCR are in place. With these Milestone Plan requirements as a foundation, the infrastructure exists to maintain systemic progress without further Court enforcement.

B. Trend Data demonstrates continued improvement and the ability to self-correct.

The Division collects and analyzes enormous amounts of trend and performance data. The Division uses these data regularly to improve system performance; the example regarding re-entry into foster care is only one of many. QI committees receive and independently review trend data specific to their regions. Vexing problem studies such as the one completed in September, 2006 provide another way for the Division to measure system performance, identify problem areas, and to correct them.

C. Utah is in substantial compliance with the Milestone Plan goals.

The Milestone Plan is an innovative and never-before tested reform. The reforms captured in the Plan represent complete system change and challenge Utah to perform at levels never before achieved. Utah has risen to the challenge. It has taken several years to implement each and every reform, but Utah has never significantly back-tracked once it reached a Milestone Plan goal. CPR and QCR performances have improved statewide. The QI committees are operational. The information set forth above and captured in more detail in trend data, the QCR, and the CPR demonstrate that the Division is in substantial compliance with the Milestone Plan's goals of safety, protection, permanence and well-being.

D. There is ample regulation and oversight of Utah's child welfare system.

Utah's child welfare system is transparent. Oversight occurs on every level: by the community; the Division; the Department of Human Services; the executive, legislative, and judicial branches of state government; and by the federal government.

While many state child welfare systems stand alone, the Division operates within the Department of Human Services (DHS), which provides two levels of oversight. On the state and regional level, the Division has Performance Milestone Coordinators to oversee training and improvement, and trainers to ensure that every worker understands the practice model. The Practice Improvement Team also oversees improvement and monitors casework. Within DHS, the Office of Service Review administers the QCR and CPR. The Child Protection Ombudsman conducts independent reviews of system performance based on citizen input, the Child Fatality Review Committee reviews every child death, and the Office of Administrative Hearings conducts independent reviews of agency actions.

Both the Division and the Department receive oversight from the Executive branch. The Governor's legal counsel and chief of staff discuss child welfare issues with the Department weekly. In October, 2006, Governor Huntsman met with approximately twenty-five caseworkers from around the state. The exchange, which lasted approximately two hours, gave caseworkers an opportunity to discuss their important work with the Governor and to provide data about caseloads and other community needs. The Governor plans to attend child welfare proceedings in Juvenile Court in November, 2006, and is co-sponsoring a workshop for care-givers of abused and neglected children involved with the Division who have been affected by methamphetamine. These and many other efforts demonstrate Governor Huntsman's oversight of the child welfare system and his support for the improvements that the parties have achieved. The Governor has also demonstrated his commitment to these improvements through his budget requests and his advocacy on behalf of the child welfare system at Utah's legislature.

The state judiciary provides another level of regulation and oversight. Utah's Juvenile Courts provide judicial review of substantiated CPS findings, warrants to take a child into custody, petitions alleging abuse, neglect, or dependency, petitions to terminate parental rights, and many other Division actions. In most cases, the Juvenile Court makes specific findings whether the Division's efforts were reasonable. The Juvenile Court's findings are, of course, subject to appellate review. In cases where a petition alleging abuse, neglect, or dependency has been filed, a Guardian ad litem is appointed for the child and attorneys are provided for the parents. These advocates provide additional checks and balances of the Division's performance. The state judiciary also participates in system improvement through the Court Improvement Committee and the Standing Committee on Child and Family Law. The Division director meets with the Board of Juvenile Court Judges regularly.

The Utah Legislature is invested in and oversees the child welfare system. This summer, the Child Welfare Legislative Oversight Panel (CWLOP) and the Health and Human Services Interim Committee both held hearings on the impact of methamphetamine use among young mothers involved with the Division, and on the child welfare system in general. The CWLOP also requested presentations on the Division's outreach to communities of color. The CWLOP receives interim reports on the child welfare system, and approximately thirteen legislators have participated as reviewers in the Division's QCRs.

Since this lawsuit began in 1993, the Federal Government has taken a more active oversight role. Aside from the federal funding regulations that provide numerous requirements, the Administration for Children and Families is now conducting in-depth Child and Family Services Reviews.¹¹ The ACF's standards are high, and states must implement program improvement plans to reach these standards. One example of the ACF's high expectations is its

¹¹ The regulations regarding the Child and Family Services Reviews are found at 45 C.F.R. §1355 et. seq.

national standard for repeat CPS reports. As discussed above, Utah exceeds the current national average of 8.4 percent, because only 6.5 percent of Utah children have repeat substantiated CPS reports within six months of a prior report. The Child and Family Service Review, however, requires that states lower their repeat referral scores to 6.1 percent.¹² This is but one example of how the ACF's standards are sufficiently stringent to replace this Court's oversight.

Child and family service reviews consist of a three step process: statewide assessment; data analysis; and on-site review. The statewide assessment is conducted by a state team, and the team must address every systemic factor under review. On-site reviews are conducted by state and federal reviewers. The ACF has the authority to conduct additional full or partial reviews of a child welfare system whenever it has information to suggest that a state is no longer operating in conformance with a required goal. These comprehensive reviews will provide on-going individual and comparative information on the Division's progress and continued improvement.

Last but certainly not least, the community monitors Utah's child welfare system. The QI committees have an increasingly active role and make important contributions in terms of community outreach, positive media reporting, caseworker recognition, and system improvement. The Division Board and the Foster Care Citizen Review Board are both citizen groups that actively address the Division's issues. This month, the Division Board organized a banquet to recognize caseworker excellence.

During 2006, at the invitation of the DHS Executive Director, approximately forty community members participated in a "Division immersion." The participants spent an entire day meeting with caseworkers from intake, CPS, in-home services, and foster care. The participants also observed a child and family team meeting. The attendees included law enforcement officers, educators, medical professionals, members of faith based organizations, substance abuse treatment providers, staff of the Governor's office, and the Chief Justice of

¹² CWPPG report, p. 5.

Utah's Supreme Court. The Chief Justice also sponsored an initiative on Utah's foster children. This month, as part of the initiative, community members will meet to address recruitment of minority foster parents. These experiences promote continued resource development and community support.

Utah's child welfare system has more oversight and external participation than ever contemplated by the Milestone Plan. The community's involvement on so many levels clearly indicates Utah's statewide commitment to sustainable reform.

V. CONCLUSION

Utah is proud of its progress and of how that progress has improved the lives of Utah's children and families. The time is at hand to turn the system back to the state, and to allow the goals and principles set forth in the Milestone Plan to continue without further Federal Court enforcement. Towards this end, the parties will meet in the coming months to discuss how a specific exit plan can be accomplished. The plan would set forth the final requirements for a joint motion for dismissal of this action. The Division will continue to comply with the actual terms of the Milestone Plan, to sustain the successes that have already been achieved, and to strive for the best possible outcomes for all of Utah's citizens.

Respectfully submitted this 8th day of November, 2006.

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